

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Business Savings Plan)	IC Nos. 02-S69775
)	02-S69781
Complaint Regarding)	
Unauthorized Change of)	
Subscriber's Telecommunications Carrier)	

ORDER

Adopted: April 28, 2003

Released: April 30, 2003

By the Acting Deputy Chief, Policy Division, Consumer & Governmental Affairs Bureau:

1. In this Order, we consider the complaints filed by Complainants¹ alleging that Business Savings Plan changed Complainants' telecommunications service providers without obtaining authorization and verification from each Complainant in violation of the Commission's rules.² We conclude that Business Savings Plan actions did result in an unauthorized change in Complainants' telecommunications service providers and we grant each Complainant's complaint.

2. In December 1998, the Commission released the *Section 258 Order* in which it adopted rules to implement Section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act).³ Section 258 prohibits the practice of

¹ See Appendix A.

² See 47 C.F.R. §§ 64.1100 – 64.1190.

³ 47 U.S.C. § 258(a); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 1508 (1998) (*Section 258 Order*), *stayed in part*, *MCI Business Savings Plan v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999); First Order on Reconsideration, 15 FCC Rcd 8158 (2000); *stay lifted*, *MCI Business Savings Plan v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000); Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996 (2000), Errata, DA No. 00-2163 (rel. Sept. 25, 2000), Erratum, DA No. 00-2192 (rel. Oct. 4, 2000), Order, FCC 01-67 (rel. Feb. 22, 2001); *reconsideration pending*. Prior to the adoption of Section 258, the Commission had taken various steps to address the slamming problem. See, e.g., *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560 (1995), *stayed in part*, 11 FCC Rcd 856 (1995); *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992), *reconsideration denied*, 8 FCC Rcd 3215 (1993); Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, 101 F.C.C.2d 911, 101 F.C.C.2d 935, *reconsideration denied*, 102 F.C.C.2d 503 (1985).

“slamming,” the submission or execution of an unauthorized change in a subscriber’s selection of a provider of telephone exchange service or telephone toll service.⁴ In the *Section 258 Order*, the Commission adopted aggressive new rules designed to take the profit out of slamming, broadened the scope of the slamming rules to encompass all carriers, and modified its existing requirements for the authorization and verification of preferred carrier changes. The rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.⁵ Pursuant to Section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with one of the Commission's verification procedures.⁶ Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that meets the requirements of Section 64.1130 authorization; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.⁷

3. The Commission also has adopted liability rules. These rules require the carrier to absolve the subscriber where the subscriber has not paid his or her bill. In that context, if the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change.⁸ Where the subscriber has paid charges to the unauthorized carrier, the Commission’s rules require that the unauthorized carrier pay 150% of those charges to the authorized carrier, and the authorized carrier shall refund or credit to the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.⁹ Carriers should note that our actions in this Order do not preclude the Commission from taking additional action, if warranted, pursuant to Section 503 of the Act.¹⁰

4. We received Complainants’ complaints alleging that Complainants’ telecommunications service providers have been changed from their authorized carriers to Business Savings Plan without Complainants’ authorization. Pursuant to Sections 1.719 and 64.1150 of our rules,¹¹ we notified Business Savings Plan of each complaint and Business

⁴ 47 U.S.C. § 258(a).

⁵ See 47 C.F.R. § 64.1120.

⁶ 47 U.S.C. § 258(a).

⁷ See 47 C.F.R. § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. 47 C.F.R. § 64.1130.

⁸ See 47 C.F.R. §§ 64.1140, 64.1160. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. *Id.*

⁹ See 47 C.F.R. §§ 64.1140, 64.1170.

¹⁰ See 47 U.S.C. § 503.

¹¹ 47 C.F.R. § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); 47 C.F.R. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

Savings Plan responded.¹² In each case, Business Savings Plan states that each Complainant authorized the change in their service.¹³ Business Savings states that it does not have a letter of agency (LOA) or third party verification recording (TPV) because the customer's account was acquired during a bulk transfer. Our rules allow carriers to transfer customers in bulk without an LOA or TPV.¹⁴ A carrier must, however, send notice of the switch to the consumer and file that notice with the Commission at least thirty days before the switch.¹⁵ Business Savings Plan failed to file proper notice with the Commission. We find that Business Savings Plan has failed to produce clear and convincing evidence that each Complainant authorized a carrier change.¹⁶ Therefore, we find that Business Savings Plan's actions resulted in an unauthorized change in each of the Complainants' telecommunications service providers and we discuss Business Savings Plan's liability below.¹⁷

5. Pursuant to Section 64.1170(b) our rules, Business Savings Plan must forward to Complainants' authorized carriers an amount equal to 150% of all charges paid by the subscriber to Business Savings Plan.¹⁸ Therefore, Business Savings Plan must forward to Complainants' authorized carriers 150% of the amount, along with copies of any telephone bills issued from the company to the Complainants.¹⁹ Within ten days of receipt of this amount, Complainants' authorized carriers shall provide a refund or credit to Complainants in the amount of 50% of all charges paid by Complainants to Business Savings Plan. Complainants have the option of asking Complainants' authorized carriers to re-rate Business Savings Plan's charges based on Complainants' authorized carriers' rates and, on behalf of Complainants, seek from Business Savings Plan, any re-rated amount exceeding 50% of all charges paid by Complainants to Business Savings Plan. Complainants' authorized carriers must also send a notice to the Commission, referencing this Order, stating that it has given a refund or credit to Complainant.²⁰ If Complainants' authorized carriers have not received the reimbursement required from Business Savings Plan within 45 days of the release of this Order, Complainants' authorized carriers must notify the Commission and Complainants accordingly. Complainants' authorized

¹² See Appendix A.

¹³ See Appendix A.

¹⁴ See 47 C.F.R. 64.1120 (e).

¹⁵ See 47 C.F.R. 64.1120 (e) (1), (3).

¹⁶ See 47 C.F.R. § 64.1150(d).

¹⁷ If Complainant is unsatisfied with the resolution of this complaint, Complainant may file a formal complaint with the Commission pursuant to Section 1.721 of the Commission's rules, 47 C.F.R. § 1.721. Such filing will be deemed to relate back to the filing date of Complainant's informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to Complainant. See 47 C.F.R. § 1.719.

¹⁸ 47 C.F.R. § 64.1170(b).

¹⁹ *Id.*

²⁰ See 47 C.F.R. § 64.1170(c).

carriers also must notify the Complainants of his or her right to pursue a claim against Business Savings Plan for a refund of all charges paid to Business Savings Plan.²¹

6. Accordingly, IT IS ORDERED that, pursuant to Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and Sections 0.141, 0.361 and 1.719 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.719, the complaint filed by Complainants against Business Savings Plan ARE GRANTED.

7. IT IS FURTHER ORDERED that, pursuant to Section 64.1170(b) of the Commission's rules, 47 C.F.R. § 64.1170(b), that Business Savings Plan must forward to Complainants' authorized carriers an amount equal to 150% of all charges paid by the subscribers along with copies of any telephone bills issued from the Business Savings Plan to the Complainants within ten (10) days of the release of this order.

8. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Nancy A. Stevenson, Acting Deputy Chief
Policy Division
Consumer & Governmental Affairs Bureau

²¹

See 47 C.F.R. § 64.1170(e).

APPENIDX

<u>INFORMAL COMPLAINT NUMBER</u>	<u>DATE OF COMPLAINT</u>	<u>DATE OF CARRIER RESPONSE</u>	<u>AUTHORIZED CARRIER</u>
02-S69775	March 8, 2002	August 29, 2002	AT&T
02-S69781	March 7, 2002	April 30, 2002	TTI National